

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**LOUIS ALEXANDER HAIRSTON,**  
**Petitioner,**

**v.**

**DAVID KATZ, Michigan Department of**  
**Corrections and WARDEN JAMES**  
**SHERMAN,**  
**Respondents.**

**C.A. No. 05-24 Erie**

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

**I RECOMMENDATION**

\_\_\_\_\_It is respectfully recommended that the instant *habeas corpus* action be dismissed for Petitioner's failure to prosecute.

**II REPORT**

On or about October 28, 2005, this Court was informed by the United States Attorney's office that Petitioner was released from the custody of the Federal Bureau of Prisons to the custody of Michigan State authorities, pursuant to a detainer that had been lodged against Petitioner by the Michigan Department of Corrections ("MDOC"). However, Petitioner failed to file with the Clerk of this Court a notice of change of address indicating where he is currently residing or incarcerated.

On November 15, 2005, this Court issued an Order requiring Petitioner to show cause before December 5, 2005, for his failure to provide proper notice of his change of address. In addition, this Court ordered Petitioner to show cause as to why this matter should not be transferred to the United States District Court for the State of Michigan in the District where Petitioner is currently incarcerated or residing. The Order further indicated that Petitioner's failure to file with this Court a proper notice of change of address or to otherwise properly

respond to the Order on or before December 5, 2005, would result in the dismissal of this case for failure to prosecute. To date, Petitioner has failed to respond to this Court's Order of November 15, 2005.

The United States Court of Appeals for the Third Circuit has set out a six-factor balancing test to guide a court in determining whether dismissal of a case is appropriate. Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863 (3d Cir. 1984). The court must consider: 1) the extent of the party's personal responsibility; 2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; 3) a history of dilatoriness; 4) whether the conduct of the party or attorney was willful or in bad faith; 5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and 6) the meritoriousness of the claim or defense. Id. at 868. Not all of the six factors need to weigh in favor of dismissal before dismissal is warranted. Hicks v. Feeney, 850 F.2d 152 (3d Cir. 1988).

Applying the Poulis factors to the present matter, this Court recommends the dismissal of this matter. For the last several months, Petitioner has taken none of the necessary steps to prosecute this case. Petitioner has ignored an Order of this Court that expressly stated his case would be dismissed for failure to prosecute if he did not comply. Alternative sanctions, such as monetary penalties, are inappropriate with indigent parties.

### **III CONCLUSION**

For the foregoing reasons, it is respectfully recommended that the instant *habeas corpus* action be dismissed for Petitioner's failure to prosecute.

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule 72.1.4B, the parties are allowed ten (10) days from the date of service to file written objections to this report. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to timely file objections may constitute

a waiver of any appellate rights.

S/Susan Paradise Baxter  
SUSAN PARADISE BAXTER  
Chief U.S. Magistrate Judge

Dated: January 20, 2006

cc: The Honorable Sean J. McLaughlin  
United States District Judge